

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	Docket No.	14-0084
)		14-0085
Kirby Van Burch and)		
VanBurch Productions, LLC,)		
doing business as)		
Kirby VanBurch Theatre)		
)		
Respondent)	Complaint	

There is reason to believe that the respondents named herein have willfully violated the Animal Welfare Act, as amended (7 U.S.C. § 2131 et seq.), hereinafter referred to as the Act, and the regulations and standards (9 C.F.R. § 1.1 et seq.) issued pursuant to the Act, and, therefore, the Administrator of the Animal and Plant Health Inspection Service ("APHIS") issues this complaint alleging the following:

I

- A. Kirby Van Burch is an individual whose address is 7812 Cozy Cove, Branson, Missouri 65616.
- B. VanBurch Productions, LLC, doing business as Kirby VanBurch Theatre, is a corporation whose address is 2406 S. Driftwood Court, Springfield, Missouri 65807.
- C. The respondents at all times material hereto, were operating as an exhibitor as defined in the Act and the regulations.
- D. Kirby Van Burch's Animal Welfare Act license number is 43-C-0320. Respondent Van Burch as a licensee received a copy of

the regulations and the standards issued pursuant to the Act and agreed in writing to comply with them.

II

A. On or about May 6, 2011, APHIS inspected respondents' premises and found that the respondents failed to maintain programs of adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine, in willful violation of sections 2.40 of the regulations (9 C.F.R. § 2.40). The violations include but are not limited to failing to provide adequate veterinary care to at least four exotic cats at the respondents' facility which constitutes a separate violation of section 2.40 (9 C.F.R. § 2.40) for each exotic cat.

B. On or about May 6, 2011, APHIS inspected respondents' premises and found the following willful violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) and the standards specified below:

1. The facility was not constructed of such material and such strength and was not maintained in good repair to protect the animals from injury and contain the animals (9 C.F.R. § 3.125(a));

2. Enclosures were not constructed and maintained so as to provide sufficient space to allow each animal to make normal

postural and social adjustments with adequate freedom of movement (9 C.F.R. § 3.128(a)); and

3. The food provided to animals was not wholesome, palatable, and free from contamination and of sufficient quantity and nutritive value to maintain all animals in good health and the diet provided to animals was not prepared with consideration for the age, species, condition, size, and type of the animal (9 C.F.R. § 3.129(a)).

III

On May 19 and May 20, 2011, APHIS inspected respondents' premises and found that the respondents failed to maintain programs of adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine, in willful violation of section 2.40(b)(2) of the regulations (9 C.F.R. § 2.40(b)(2)). The violations include but are not limited to failing to provide adequate veterinary care to an exotic cat named "Charlie".

IV

On June 22, 2011, APHIS inspected respondents' premises and found that the respondents failed to maintain programs of

adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine, in willful violation of section 2.40(b) of the regulations (9 C.F.R. § 2.40(b)).

V

On April 11, 2013, APHIS inspected respondents' premises and found that the respondents failed to maintain programs of adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine, in willful violation of section 2.40(b)(2) of the regulations (9 C.F.R. § 2.40(b)(2)).

VI

On or about April 15, 2013, APHIS inspected respondents' premises and found the following willful violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) and the standards specified below:

1. The facility was not constructed of such material and such strength as appropriate for the animals and was not maintained in good repair to protect the animals from injury and contain the animals (9 C.F.R. § 3.125(a));
2. Provisions were not made for the removal and disposal of animal and food wastes, bedding, dead animals, trash and debris in order to minimize vermin infestation, odors, and disease hazards (9 C.F.R. § 3.125(d));

3. A suitable sanitary method was not provided to eliminate rapidly, excess water from indoor housing facilities, (9 C.F.R. § 3.126(d)); and

4. Live animals were placed in animal cargo space that did not have a supply of air sufficient for normal breathing for each live animal (9 C.F.R. § 3.138(c)).

VII

On or about June 27, 2013, APHIS inspected respondents' premises and found the following willful violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) and the standards specified below:

1. Animals were not handled as expeditiously and carefully as possible in a manner that does not cause trauma, overheating, excessive cooling, behavioral stress, physical harm, or unnecessary discomfort (9 C.F.R. § 2.131(b)(1)).

WHEREFORE, it is hereby ordered that for the purpose of determining whether the respondents have in fact willfully violated the Act and the regulations and standards issued under the Act, this complaint shall be served upon the respondents. The respondents shall file an answer with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250-9200, in accordance with the Rules of Practice governing proceedings under the Act (7 C.F.R. § 1.130 et seq.). Failure to

file an answer shall constitute an admission of all the material allegations of this complaint.

The Animal and Plant Health Inspection Service requests:

1. That unless the respondents fail to file an answer within the time allowed therefor, or file an answer admitting all the material allegations of this complaint, this proceeding be set for oral hearing in conformity with the Rules of Practice governing proceedings under the Act; and

2. That such order or orders be issued as are authorized by the Act and warranted under the circumstances, including an order:


- (a) Requiring the respondents to cease and desist from violating the Act and the regulations and standards issued thereunder;

(b) Assessing civil penalties against the respondents in accordance with section 19 of the Act (7 U.S.C. § 2149); and

(c) Permanently revoking the respondents' license under the Act.

Done at Washington, D.C.

this 19th day of March, 2014



Administrator
Animal and Plant Health
Inspection Service

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